

P.E.R.C. NO. 86-104

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD TOWNSHIP,

Public Employer,

-and-

Docket No. RO-85-153

BLOOMFIELD FIRE SUPERIOR
OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

The Chairman of the Public Employment Relations Commission, acting pursuant to authority delegated by the full Commission and in the absence of exceptions, agrees with the Hearing Officer and finds that the Bloomfield Township deputy fire chiefs are not managerial executives within the meaning of the New Jersey Employer-Employee Relations Act and that the petitioned-for unit is appropriate.

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Appearances:

For the Public Employer, Vincent A. Pirone, Esq.

For the Petitioner, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, Of Counsel)

DECISION AND ORDER

On June 26, 1985, the Bloomfield Fire Superior Officers' Association ("Association") filed a Petition for Certification of Public Employee Representative. The petitioner seeks to represent all^{1/} deputy fire chiefs employed by the Township of Bloomfield ("Township"). The Township contends that the proposed negotiations unit is inappropriate because the deputy chiefs are "managerial executives" within the meaning of the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-3(f).

^{1/} The original petition sought to exclude one deputy. The petition was amended, at hearing, to include that deputy.

On August 27, 1985, the Director of Representation issued a Notice of Hearing. On October 2, 1985, Hearing Officer David F. Corrigan conducted a hearing. The parties stipulated facts, examined witnesses, introduced exhibits and argued orally.

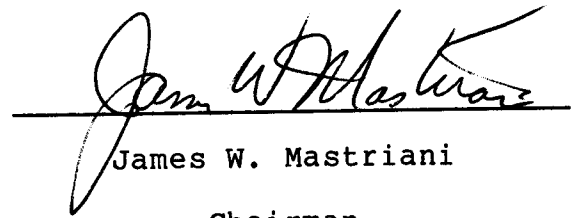
On January 24, 1986, the Hearing Officer issued his report and recommended decision, H.O. No. 86-3, 12 NJPER ____ (¶____ 1986) (copy attached). He concluded that the deputy chiefs are not managerial executives and therefore, the petitioned-for unit is appropriate.

The Hearing Officer served his report on the parties and notified them that exceptions, if any, were due on or before February 6, 1986. Neither party filed exceptions or requested an extension of time.

Pursuant to N.J.A.C. 19:11-8.8, the Commission has transferred this case to itself. I have reviewed the record. The Hearing Officer's findings of fact (2-8) are accurate. I adopt and incorporate them here. Acting under authority delegated to me by the full Commission, and in the absence of exceptions, I agree with the Hearing Officer that the Township's deputy chiefs are not managerial executives within the meaning of the Act and that the petitioned-for unit is appropriate.

ORDER

This case is remanded to the Director of Representation for further proceedings consistent with this opinion.


James W. Mastriani
Chairman

DATED: Trenton, New Jersey
March 20, 1986

H.O. NO. 86-3

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BLOOMFIELD TOWNSHIP,

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-and-

Docket No. RO-85-153

BLOOMFIELD FIRE SUPERIOR
OFFICERS ASSOCIATION,

Petitioner.

SYNOPSIS

A Hearing Officer of the Public Employment Relations Commission recommends that a negotiations unit composed of Deputy Chiefs employed by the Township of Bloomfield is appropriate and an election should be conducted to determine the majority representative, if any, of these employees. The Hearing Officer recommends that the deputy chiefs are not "managerial executives" within the meaning of the Act and therefore are eligible for representation.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Report and Recommendations, any exception thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law.

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Appearances:

For the Public Employer, Vincent A. Pirone, Esq.

For the Petitioner, Oxfeld, Cohen & Blunda, Esqs.
(Sanford R. Oxfeld, of Counsel)

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

On June 26, 1985, the Bloomfield Fire Superior Officers Association ("Association") filed a Petition for Certification of Public Employee Representative with the Public Employment Relations Commission. The petition seeks to represent all^{1/} deputy fire chiefs employed by the Township of Bloomfield ("Township"). The Township contends that the proposed negotiations unit is inappropriate because the deputy chiefs are "managerial executives" within the meaning of the New Jersey Employer-Employee Relations Act. N.J.S.A. 34:13A-5.3; N.J.S.A. 34:13A-3(f).

^{1/} The petition, as originally filed, sought to exclude one deputy. The petition was amended, at hearing, to include this deputy as well.

On August 27, 1985, the Director of Representation issued a Notice of Hearing. On October 2, 1985, I conducted a hearing in Newark. The parties stipulated certain facts, examined witnesses, introduced exhibits and argued orally.

Findings of Fact

1. The Township of Bloomfield is a public employer within the meaning of the Act and is subject to its provisions. It is the employer of the employees who are the subject of this representation petition.

2. The Bloomfield Fire Superior Officers Association is a public employee representative within the meaning of the Act and is subject to its provisions.

3. The Township of Bloomfield operates under the Mayor and a six member Town council form of government. Directly under the Mayor and Council in the Town's Organization Chart is the Town Administrator who serves as the liaison between the Mayor and Town Council and the Town's Department Heads.

4. The Fire Department is one of fifteen departments. There is a chief and five deputy chiefs who report directly to the chief. There are 24 captains and 66 firefighters.

5. There are four "tours" in the department. A tour is defined as a "group of men on duty for 42 hours." There is one deputy chief responsible for each tour (T5). Each tour has either 16 or 17 firefighters and 6 captains. In the absence of the deputy chief, one captain assumes this responsibility. This captain is designated by the Fire Chief.

6. There are two other negotiations units in the Town composed of firefighting employees: a rank and file unit of firefighters and a unit of fire captains.

7. The job description of Deputy Chief provides in its entirety:

SECTION 1. The Deputy Chief of the Fire Department shall rank next below the Chief of the Department, and it shall be his duty to carry out the orders and instructions of the Chief of the Department with respect to his command in a prompt and efficient manner.

SECTION 2. During the absence of the Chief of the Department from duty, due to sickness, or absence, from the Town of Bloomfield, on leave, or special duty, the Deputy Chief assigned shall assume the duties of the Chief of the Department and during such period he shall exercise the same powers, perform the same duties and be subject to the same rules and regulations as the Chief of the Department. He shall not, however, issue any orders, make any transfers or assignments or in any way interfere with the general policy of the Department without the approval of the Chief or Town Administrator.

SECTION 3. A Deputy Chief shall be in charge of each group.

SECTION 4. He shall attend all fires in conformity to the schedule prescribed in the running chart while on duty and promptly report his arrival to the officer in command. When at a fire he shall assume command and have full control until the arrival of the Chief of the Department and shall direct the movements of the officers and men so as to extinguish the fire with the least possible damage from fire, water or otherwise.

- SECTION 5. He shall cause all men and apparatus not needed at fires to return to quarters.
- SECTION 6. He shall see that all reports and records required from his shift are properly made.
- SECTION 7. He shall promptly and fully investigate all violations of the rules and regulations of the Fire Department or any neglect of duty that may come to his notice and shall make a full report thereon to the Chief of the Department.
- SECTION 8. He shall promptly and officially report to the Chief of the Department if he is for any reason unable to perform his duty.
- SECTION 9. On going off duty he shall make a full report to the Chief of all important events in the Fire Department during his tour of duty.

8. In contrast, the Fire Chief's job description provides, in relevant part, that:

- SECTION 1. The Chief of the Fire Department shall be the executive head of the Fire Department and shall be responsible to the Governing Body for the conduct, efficiency and management of the Department.
- SECTION 2. He shall have charge of the personnel of the Fire Department, the extinguishment of fires, the necessary protection of property in connection therewith, the making of inspections for fire prevention and safety of life and property, the keeping of accurate records of all business transacted by the Department and of all fires occurring in the Town, or on Mutual Aid calls together with all pertinent data in connection therewith.
- SECTION 3. He shall have full control of all apparatus and equipment and tools, their assignment and use.

SECTION 4. He shall recommend to the Governing Body, through the Town Administrator, from time to time, the purchase of new equipment, or the repair or rearrangement of old equipment, which will increase the efficiency of the Department.

* * *

SECTION 6. He shall see that the morale and efficiency of the Department is kept at the highest point, that the fire stations and other quarters are being properly maintained, kept clean, and in good repair. That all apparatus, equipment and supplies are properly cared for and maintained in proper working condition, that all drills, exercises and inspection duties are regularly and properly performed, that all records and reports are duly kept and that all uniforms and equipment of the men are complete, neat and serviceable and of approved design.

* * *

SECTION 11: He shall see that all members of the Department undergo regular drills and instruction; that a system of such drills and a school of instruction is established and a proper record kept thereof.

SECTION 12: He shall have power in case of fire to demolish buildings or parts of buildings, which, in his judgment, are necessary to be destroyed in order to prevent further damage to life and property.

SECTION 13: He shall have authority to send men and apparatus to neighboring municipalities for the purpose of extinguishing fires or protecting property left unprotected by an emergency, when in his judgment, such action is necessary. He shall also have power to call upon neighboring municipalities to assist in the extinguishing of fires and to cover up unprotected territory whenever in his judgment it shall be necessary.

SECTION 16. He shall see that all the laws, ordinances, rules, regulations, orders or directives for the governing of the Department are promptly and implicitly enforced and obeyed by all members of the Fire Department, and that all violations that may come to his knowledge are promptly investigated and reported to the Town Administrator, accompanied, when necessary, by proper and well sustained charges.

SECTION 17. He shall summarily suspend from duty, with, or without pay, any member of the Department for a flagrant violation of law, ordinance, rule, regulation, or direction in all cases where the discipline or the reputation of the Department would suffer if such prompt action were not taken, and shall report such action to the Town Administrator.

SECTION 18. He shall have supreme command at all fires and at all times when on duty over the members of the Department.

SECTION 19. He shall make all assignments, transfers, and details and fill any temporary vacancy that may occur by detailing another member of the Department to the position.

9. The Fire Chief sets fire policy for the Township.

Policy is promulgated in the department's rules and regulations and as established by the Fire Chief's orders (T61). For example, there has been one policy change made in the last few years: the number of firefighting personnel permitted off at one time has been reduced. The Deputy Chiefs played no role in changing that policy (T58-59). The Deputy Chiefs have no input into the manning of the department or of the individual tours (T28). Nor do they participate in determining vacation policy (T30). Deputy Chiefs are

not assigned to the fire stations. Rather, they work out of headquarters (T19). The Deputy Chief is the highest ranking officer on tour and is responsible for carrying out the policy set by the Chief (T64-65).

10. The Deputy Chiefs are involved in the budget process and are assigned "designated areas of responsibility" in the preparation of the budget (T107). They make the initial recommendation to the Chief for the purchase of new equipment (T33). Other than this, however, they play no role in budget formulation (T39). The Chief reviews the budget recommendations, makes certain modifications and submits them to the Town Council (T36).

11. The Chief sets all policy concerning firefighting procedures (T46). He does, however, seek the input of the deputy chiefs and delegates certain areas of responsibility to them, such as uniform policy (T47). However, such policy directives, even if prepared by the deputy chiefs, are issued in the Chief's name and the Chief reviews and retains the right to approve the policy (T47) (T82-83).

12. Deputy Chiefs, at the present time, do not represent the Township in labor negotiations. In fact, they have no involvement in any aspect of the negotiations process except in the lower steps of the grievance procedure (T43) (T100).

13. Deputy Chiefs have the authority to make temporary transfers of personnel and initiate discipline (T64-67). The chief

training officer is a deputy chief (T69). They have the authority to call in additional personnel when there are manpower shortages and also have authority to call in a "second alarm." (T68; T50). With respect to actual fires, according to the deputy chief's testimony:

[I am the] chief officer in charge of the firefighting forces. If a fire breaks out, I go that that fire, I command the troopers at the fire. I instruct them what to do....And if the chief...arrives at the scene, then he becomes the chief of the fire.
(T74).

14. Deputy Chiefs do not have the authority to make permanent transfers of personnel (T21). Nor do they have authority to discipline (T21). They do make recommendations to the Chief regarding such matters. These recommendations are usually, but not always, followed (T22; PE5-6). The Chief has made transfers over the objection of a Deputy Chief and has modified recommended disciplinary penalties. The Deputy Chiefs are not responsible for personnel decisions, such as hiring and promotions. Such decisions are made by Civil Service.

ANALYSIS

The sole issue presented for determination is whether the Bloomfield Deputy Fire Chiefs are "managerial executives" within the meaning of our Act. If they are, the petition must be dismissed since such employees do not have the right to form an employee organization. N.J.S.A. 34:13A-5.3. The standard to apply in making this determination is clear. N.J.S.A. 34:13A-3(f) provides:

"Managerial executives" of a public employer means persons who formulate management policies and practices, except that in any school district this term shall include only the superintendent or other chief administrator, and the assistant superintendent of the district.

In Borough of Avon, P.E.R.C. No. 78-21, 3 NJPER 373 (1977), the Commission first applied this definition. There, a lifeguard captain was found not to be a managerial executive. This was so even though he prepared the beach operations budget, authorized and modified rules and regulations, created the disciplinary point system, authorized changes in the workweek, added guards to the payroll in emergencies, participated in management meetings, influenced the Borough and Mayor's policies, trained and scheduled all guards and managed the beach and supervised guards on a day-to-day basis. The Commission stated:

The term "managerial executive shall be narrowly construed and that the relevant National Labor Relations Board precedent...indicates that a wider range of discretion than that possessed by...[the lifeguard captain] is needed. [He]... was clearly a supervisor and in that capacity could be said to be effectuating management policy, but the Act clearly distinguishes managerial executives --excluded from coverage-- from supervisors--eligible to be represented in an appropriate unit.
Id. at 374.

In Borough of Montvale, P.E.R.C. 81-52, 6 NJPER 507, 508-09 (¶11259 1980) the Commission stated:

A person formulates policies when he develops a particular set of objectives designed to further the mission of the governmental unit and when he selects a course of action from among available alternatives. A person directs the effectuation

of policy when he is charged with developing the methods, means and extent for reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors. Simply put, a managerial executive must possess and exercise a level of authority and independent judgment sufficient to affect broadly the organization's purposes or means of effectuation of these purposes. Whether or not an employee possesses this level of authority may generally be determined by focusing on the interplay of three factors: (1) the relative position of that employee in his employer's hierarchy; (2) his functions and responsibilities; and (3) the extent of discretion he exercises. Id. at 509.

I conclude, based on my application of the foregoing principles, that the Bloomfield Deputy Fire Chiefs are not managerial executives and therefore the petitioned-for unit is appropriate. First, the record reveals that the Deputy Chiefs do not, except in very limited circumstances, "formulate management policies and practices." In general, that is the exclusive province of the chief. In fact, the deputy chief's played no role in the decision to reduce the number of men permitted off at one time. That, apparently, is the only major policy change made in the last few years. Moreover, the limited role the Deputy Chiefs have in formulating policy -- such as uniforms and an occasional order issued under the Chief's name -- is directly under the authority of the Chief. Further, they cannot transfer or discipline personnel. The most they can do is "recommend" which in theory as well as practice is subject to review by the Chief. This makes these employees "supervisors" within the meaning of the Act, but not managerial executives. In fact, "Policy" is codified in the rules

and regulations and the Chief's orders. Further, even when they would have occasion to function as "Acting Chiefs", they are precluded from formulating policy. Except in one instance several years ago, they have not been involved in negotiations. Compare, Borough of Madison, P.E.R.C. No. 85-76, 11 NJPER 61 (¶16032 1985).

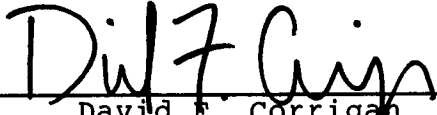
I also do not believe that Deputy Chiefs direct the effectuation of such management policies. Simply put, as in Montvale, supra, the Deputy Chiefs are not responsible with developing the "method, means and extent for reaching a policy objective." This is not to say he does not play an important role in the department. He is the head of his "tour;" he takes charge at fires; he makes recommendations to the Chief. He even plays a role in the initial budgetary process. But these important functions do not constitute policy formulation or even make him responsible for developing the means to reach the policy objective. Moreover, the discretion he has is limited. For example, his involvement in the budget is essentially limited to determining whether equipment should be replaced. Deciding whether equipment is worn out does not make one a managerial executive.

It is noteworthy to compare this case to City of Newark, D.R. No. 82-18, 7 NJPER 640 (¶12288 1981). There, the Director of Representation affirmed a Hearing Officer's recommendation that Deputy Fire Chiefs employed by the City of Newark were managerial executives. The factors that justified this conclusion are not present here. Indeed, the contrast in job responsibilities is striking and supports my recommendation. For instance:

- (1) total discretion to deploy their personnel. 7 NJPER at 484. Bloomfield Deputy Chiefs have no authority to make permanent transfers.
- (2) discretion in training. Although a Bloomfield Deputy Chief is chief training officer, the Fire Chief sets training policy.
- (3) size is a significant difference. There are over 800 Newark firefighters. In Bloomfield, there are approximately 100. Thus, the small size obviates the need for more than one person to formulate policy.

RECOMMENDATION

I recommend a finding that Deputy Fire Chiefs in the Town of Bloomfield are not "managerial executives" within the meaning of the Act. Therefore, the petitioned-for unit, as amended, is appropriate and an election is warranted.



David F. Corrigan
Hearing Officer

DATED: January 24, 1986
Trenton, New Jersey